

REMARKS

Claim 1 has been amended by deleting organogelling agents 12-hydroxystearic acid or its derivatives, esters and amides of N-acylamino acids, and dibenzylidenesorbitol and its derivatives from the claim. Thus, claim 1 is now commensurate in scope with previous claim 75.

Claim 7 has also been amended to include the phrase “with respect to the total weight of the composition.”

Claim 69 has been amended so that it is commensurate in scope with claim 1.

Claim 75 has been canceled.

New claims 77 and 78 directed to specific copolymers have been added.

Claims 1-69, 77 and 78 are currently pending, although claim 50 has been withdrawn from consideration. In view of the above amendments to claim 50, Applicants respectfully request rejoinder of this claim at this time.

The Office Action rejected claim 7 under 35 U.S.C. §112, second paragraph, asserting that the claim is indefinite. In view of the above non-limiting amendments to the claim, Applicants respectfully request reconsideration and withdrawal of this rejection and objections.

The Office Action also rejected claim 69 under 35 U.S.C. § 102 as anticipated by U.S. patent 6,451,295 (“Cai”), and claims 1-43, 51-68 and 75 under 35 U.S.C. § 103 as obvious over Cai. In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The claimed invention relates to compositions containing a specified organogelling agent. Cai does not teach or suggest the specified gelling agents, let alone any benefits

associated with combining the gelling agents with the required polymer and an effective amount of colorant. More specifically, col. 18 of Cai does not teach or suggest the claimed organogelling agents. For at least this reason Applicants respectfully submit that the pending rejections are improper and should be reconsidered and withdrawn.

The claimed invention also relates to compositions containing at least one pigment in an amount sufficient to provide a coloring effect to keratin materials upon application as well as to methods of making or using such compositions. Cai neither teaches nor suggests makeup compositions containing at least one pigment in a result effective amount. Accordingly, Cai cannot teach or suggest the claimed invention.

Cai is directed to deodorant compositions. To the extent that these compositions can contain colorant, the colorant would presumably serve the purpose of providing a colored deodorant composition. However, given that Cai's deodorants are clear (see, Title), Cai's deodorants must contain such insignificant amounts of colorant, if any, that they do not even produce a colored product. Such clear products cannot teach or suggest the claimed invention which requires the presence of result effective amounts of pigments upon application.

Even assuming that Cai's deodorants are colored to some degree, however, such a composition would not teach or suggest the claimed compositions either. Deodorants, even if colored, are compositions which do not leave a colored mark upon application under the arms. Rather, application of deodorants results in a clear mark. This is the effect deodorant makers strive for and advertise -- "goes on clear"; "no marks," etc.

A colored deodorant which leaves an uncolored mark upon application under the arms is a far cry from the claimed invention which relates to compositions which impart color to skin, lips, eyelashes, etc. upon application, thereby beautifying the skin, lips, eyelashes.

Cai states that his deodorants can contain coloring agents along with other conventional ingredients. (Col. 24, lines 45-55). However, in the preceding paragraph, Cai states that “active materials” such as fragrances and antimicrobial agents can be incorporated into his compositions. Significantly, coloring agents are not identified as “active materials.”

Similarly, at col. 22, lines 15-25, Cai defines “active ingredients” as being present in an amount sufficient to have a functional effect. Again, Cai describes fragrances and antimicrobial agents as active ingredients, but does not include coloring agents as an active agent. Rather, once again, Cai refers to coloring agents as merely being optional ingredients. (Col. 22, lines 26-34).

Clearly, Cai does not identify colorants as being acceptable active agents that can be present in result effective amounts. As a result of this omission, Cai cannot teach or suggest adding colorants as active agents, or in an amount sufficient to have a functional effect (i.e., provide color upon application). This conclusion is reinforced by Cai’s purpose: to produce clear compositions.

Stated another way, Cai neither teaches nor suggests adding sufficient pigment in an acceptable manner such that the pigment will have a functional effect and provide color upon application to the skin. Thus, neither Cai cannot teach or suggest the present invention.

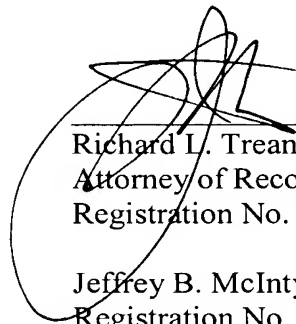
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In view of the above, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. §§ 102 and 103.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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